



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SEATTLE DISTRICT
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

AUG 08 2018

Regulatory Branch

Electron Hydro, LLC
Mr. Thom Fischer
1800 James Street, Suite 201
Bellingham, Washington 98225

Reference: NWS-2016-350
Electron Hydro, LLC

Dear Mr. Fischer:

We have reviewed your application to replace a damaged wooden apron water diversion structure and gate spillway system as well as install bank protection along 985 linear feet of bank in the Puyallup River near Electron, Pierce County, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 3, Maintenance and 13, Bank Stabilization (Federal Register January 6, 2017, Vol. 82, No. 4), authorizes your proposal as depicted on the enclosed drawings dated March 28, 2017.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 3 and 13, Terms and Conditions* and the following special conditions:

a. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA; e.g., an ESA Section 10 permit, or ESA Section 7 consultation Biological Opinion (BO) with non-discretionary "incidental take" provisions with which you must comply). The enclosed BO(s) prepared by the National Marine Fisheries Service (NMFS) dated July 9, 2018, and the U.S. Fish and Wildlife Service (USFWS) dated July 11, 2018, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified "incidental take" in the BO(s) (NMFS Reference Number WCR-2016-4993, USFWS Reference Number 01EWF00-2017-F-0890). Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the enclosed BO(s). These terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO(s), where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-

compliance with your Corps permit. The USFWS/NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

b. Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

c. In order to meet the requirements of the Endangered Species Act you may conduct the authorized activities from July 15 through September 15 in any year this permit is valid. You shall not conduct work authorized by this permit from September 16 through July 14 in any year this permit is valid.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

The authorized work complies with the Washington State Department of Ecology's (Ecology) Water Quality Certification (WQC) requirements and Coastal Zone Management (CZM) consistency determination response for this NWP. No further coordination with Ecology for WQC and CZM is required.

You have not requested a jurisdictional determination for this proposed project. If you believe the U.S. Army Corps of Engineers does not have jurisdiction over all or portions of your project you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this NWP authorization is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

You are cautioned that any change in project location or plans will require that you submit a copy of the revised plans to this office and obtain our approval before you begin work. Deviating from the approved plans could result in the assessment of criminal or civil penalties.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. These documents and information about our program are available on our website at www.nws.usace.army.mil, select "Regulatory Branch, Permit Information" and then "Contact Us." A copy of this letter without enclosures will be furnished to Mr. Chris Spens at cspens@tollhouseenergy.com. If you have any questions, please contact me at jacalen.m.printz@usace.army.mil or (206) 764-6901.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jacalen Printz', with a stylized flourish at the end.

Jacalen Printz, Section Chief
Regulatory Branch

Enclosures